

AMENDED IN ASSEMBLY JUNE 30, 2009

SENATE BILL

No. 817

**Introduced by Committee on Elections, Reapportionment and
Constitutional Amendments (Hancock (chair), Walters (vice
chair), Liu, DeSaulnier, Cogdill)**

March 2, 2009

An act to amend Sections 300, 3004, 3100, 3102, 3103, 3103.5, 3104, 3107, 3108, 3109, 3110, and 3112 of the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

SB 817, as amended, Committee on Elections, Reapportionment and Constitutional Amendments. Elections: special vote by mail voter.

Existing law authorizes a "vote by mail voter" to cast his or her ballot by mail. Existing law also authorizes members of the Armed Forces, their spouses and dependents; a United States citizen temporarily residing outside the country; and crew members of a United States merchant vessel to cast their votes as "special absentee voters."

This bill would change the term for these voters from "special absentee voters" to "special vote by mail voters."

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 300 of the Elections Code is amended to
- 2 read:
- 3 300. (a) "Vote by mail voter" means any voter casting a ballot
- 4 in any way other than at the polling place.

1 (b) “Special vote by mail voter” means an elector who is any
2 of the following:

3 (1) A member of the Armed Forces of the United States or any
4 auxiliary branch thereof.

5 (2) A citizen of the United States temporarily living outside of
6 the territorial limits of the United States or the District of Columbia.

7 (3) Serving on a merchant vessel documented under the laws
8 of the United States.

9 (4) A spouse or dependent of a member of the Armed Forces
10 or any auxiliary branch thereof.

11 SEC. 2. Section 3004 of the Elections Code is amended to read:

12 3004. The county elections official shall place a notice in any
13 office within the county where applications are taken for federal
14 passports or where military enlistments are received to inform
15 potential special vote by mail voters of their right to a vote by mail
16 voter’s ballot and where registration materials and application
17 forms can be obtained.

18 SEC. 3. Section 3100 of the Elections Code is amended to read:

19 3100. When a voter who qualifies as a special vote by mail
20 voter pursuant to subdivision (b) of Section 300 applies for a vote
21 by mail ballot, the application shall be deemed to be an affidavit
22 of registration and an application for permanent vote by mail status,
23 pursuant to Chapter 3 (commencing with Section 3200). The
24 application must be completed by the voter and must contain the
25 voter’s name, residence address for voting purposes, the address
26 to which the ballot is to be sent, the voter’s political party for a
27 primary election, and the voter’s signature.

28 If the applicant is not a resident of the county to which he or she
29 has applied, the elections official receiving the application shall
30 forward it immediately to the proper county.

31 SEC. 4. Section 3102 of the Elections Code, as amended by
32 Section 1 of Chapter 252 of the Statutes of 2008, is amended to
33 read:

34 3102. (a) Applications for the ballots of special vote by mail
35 voters shall be received and, except as provided in Section 3103.5,
36 the ballots shall be received and canvassed, at the same time and
37 under the same procedure as vote by mail ballots, insofar as that
38 procedure is not inconsistent with this chapter.

1 (b) This section shall remain in effect only until January 1, 2011,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before January 1, 2011, deletes or extends that date.

4 SEC. 5. Section 3102 of the Elections Code, as amended by
5 Section 2 of Chapter 252 of the Statutes of 2008, is amended to
6 read:

7 3102. (a) Applications for the ballots of special vote by mail
8 voters shall be received, and the ballots shall be received and
9 canvassed at the same time and under the same procedure as vote
10 by mail ballots, insofar as that procedure is not inconsistent with
11 this chapter.

12 (b) This section shall become operative January 1, 2011.

13 SEC. 6. Section 3103 of the Elections Code, as amended by
14 Section 3 of Chapter 252 of the Statutes of 2008, is amended to
15 read:

16 3103. (a) An application made pursuant to this chapter that is
17 received by the elections official prior to the 60th day before the
18 election shall be kept and processed on or after the 60th day before
19 the election.

20 (b) The elections official shall immediately send the voter a
21 ballot in a form prescribed and provided by the Secretary of State.
22 The elections official shall send with the ballot a list of all
23 candidates who have qualified for the ballot by the 60th day before
24 the election and a list of all measures that are to be submitted to
25 the voters and on which the voter is qualified to vote. The voter
26 shall be entitled to write in the name of any specific candidate
27 seeking nomination or election to any office listed on the ballot.

28 (c) Notwithstanding Section 15341 or any other provision of
29 law, any name written upon a ballot for a particular office pursuant
30 to subdivision (b) shall be counted for the office or nomination, if
31 the candidate whose name has been written on the ballot has, as
32 of the date of the election, qualified to have his or her name placed
33 on the ballot for the office, or has qualified as a write-in candidate
34 for the office.

35 (d) Except as provided in Section 3103.5, the elections official
36 shall receive and canvass special vote by mail voter ballots
37 described in this section under the same procedure as vote by mail
38 ballots, insofar as that procedure is not inconsistent with this
39 section.

1 (e) If a voter executes a special vote by mail ballot pursuant to
2 this section and an application for a vote by mail ballot pursuant
3 to Section 3101, the elections official shall cancel the voter's
4 permanent vote by mail status, and process the application in
5 accordance with Chapter 1 (commencing with Section 3000).

6 (f) Notwithstanding any other provision of law, a special vote
7 by mail voter who qualifies pursuant to this section may, by
8 facsimile transmission, register to vote and apply for a special vote
9 by mail ballot or a vote by mail ballot. Upon request, the elections
10 official may send to the qualified special vote by mail voter either
11 by mail, facsimile, or electronic transmission the special vote by
12 mail ballot or, if available, a vote by mail ballot pursuant to Chapter
13 1 (commencing with Section 3000).

14 (g) This section shall remain in effect only until January 1, 2011,
15 and as of that date is repealed, unless a later enacted statute, that
16 is enacted before January 1, 2011, deletes or extends that date.

17 SEC. 7. Section 3103 of the Elections Code, as amended by
18 Section 4 of Chapter 252 of the Statutes of 2008, is amended to
19 read:

20 3103. (a) An application made pursuant to this chapter that is
21 received by the elections official prior to the 60th day before the
22 election shall be kept and processed on or after the 60th day before
23 the election.

24 (b) The elections official shall immediately send the voter a
25 ballot in a form prescribed and provided by the Secretary of State.
26 The elections official shall send with the ballot a list of all
27 candidates who have qualified for the ballot by the 60th day before
28 the election and a list of all measures that are to be submitted to
29 the voters and on which the voter is qualified to vote. The voter
30 shall be entitled to write in the name of any specific candidate
31 seeking nomination or election to any office listed on the ballot.

32 (c) Notwithstanding Section 15341 or any other provision of
33 law, any name written upon a ballot for a particular office pursuant
34 to subdivision (b) shall be counted for the office or nomination, if
35 the candidate whose name has been written on the ballot has, as
36 of the date of the election, qualified to have his or her name placed
37 on the ballot for the office, or has qualified as a write-in candidate
38 for the office.

39 (d) The elections official shall receive and canvass special vote
40 by mail voter ballots described in this section under the same

1 procedure as vote by mail ballots, insofar as that procedure is not
2 inconsistent with this section.

3 (e) If a voter executes a special vote by mail ballot pursuant to
4 this section and an application for a vote by mail ballot pursuant
5 to Section 3101, the elections official shall reject the voted ballot
6 previously cast, cancel the voter's permanent vote by mail status,
7 and process the application in accordance with Chapter 1
8 (commencing with Section 3000).

9 (f) Notwithstanding any other provision of law, a special vote
10 by mail voter who qualifies pursuant to this section may, by
11 facsimile transmission, register to vote and apply for a special vote
12 by mail ballot or a vote by mail ballot. Upon request, the elections
13 official may send to the qualified special vote by mail voter either
14 by mail, facsimile, or electronic transmission the special vote by
15 mail ballot or, if available, a vote by mail ballot pursuant to Chapter
16 1 (commencing with Section 3000).

17 (g) This section shall become operative January 1, 2011.

18 SEC. 8. Section 3103.5 of the Elections Code is amended to
19 read:

20 3103.5. (a) (1) A special vote by mail voter who is temporarily
21 living outside of the territorial limits of the United States or the
22 District of Columbia, or is called for military service within the
23 United States on or after the final date to make application for a
24 vote by mail voter ballot, may return his or her ballot by facsimile
25 transmission. To be counted, the ballot returned by facsimile
26 transmission must be received by the voter's elections official no
27 later than the closing of the polls on election day and must be
28 accompanied by an identification envelope containing all of the
29 information required by Section 3011 and an oath of voter
30 declaration in substantially the following form:

31
32 OATH OF VOTER

33 I, _____, acknowledge that by returning my voted
34 ballot by facsimile transmission I have waived my right to have my ballot
35 kept secret. Nevertheless, I understand that, as with any vote by mail
36 voter, my signature, whether on this oath of voter form or my identification
37 envelope, will be permanently separated from my voted ballot to maintain
38 its secrecy at the outset of the tabulation process and thereafter.
39

1 My residence address is _____.
2 (Street Address) (City) (ZIP Code)

3
4 My current mailing address is _____.
5 (Street Address) (City) (ZIP Code)

6
7 My e-mail address is _____. My facsimile transmission
8 number is _____.

9
10 I am a resident of _____ County, State of California, and I have not
11 applied, nor intend to apply, for a vote by mail ballot from any other jurisdiction
12 for the same election.

13
14 I declare under penalty of perjury under the laws of the State of California
15 that the foregoing is true and correct.

16
17 Dated this _____ day of _____, 20____.

18
19 (Signature) _____
20 voter (power of attorney cannot be accepted)

21
22 YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE
23 ABOVE OATH AND INCLUDE IT WITH YOUR BALLOT AND
24 IDENTIFICATION ENVELOPE, ALL OF WHICH ARE RETURNED
25 BY FACSIMILE TRANSMISSION.

26
27 (2) Notwithstanding the voter's waiver of the right to a secret
28 ballot, each elections official shall adopt appropriate procedures
29 to protect the secrecy of ballots returned by facsimile transmission.

30 (3) Upon receipt of a ballot returned by facsimile transmission,
31 the elections official shall determine the voter's eligibility to vote
32 by comparing the signature on the return information with the
33 signature on the voter's affidavit of registration. The ballot shall
34 be duplicated and all materials preserved according to procedures
35 set forth in this code.

36 (4) Notwithstanding paragraph (1), a special vote by mail voter
37 who is permitted to return his or her ballot by facsimile
38 transmission is, nonetheless, encouraged to return his or her ballot
39 by mail or in person if possible. A *special* vote by mail-absentee

1 voter should return a ballot by facsimile transmission only if doing
2 so is necessary for the ballot to be received before the close of
3 polls on election day.

4 (b) The Secretary of State shall make a recommendation to the
5 Legislature, no later than December 31, 2008, on the benefits and
6 problems, if any, derived from permitting qualified special vote
7 by mail voters to return their ballots by facsimile transmission,
8 and shall include in the recommendation the number of ballots
9 returned by facsimile transmission pursuant to this section.

10 (c) This section shall remain in effect only until January 1, 2011,
11 and as of that date is repealed, unless a later enacted statute, that
12 is enacted before January 1, 2011, deletes or extends that date.

13 SEC. 9. Section 3104 of the Elections Code is amended to read:

14 3104. A vote by mail ballot application by a qualified special
15 vote by mail voter shall also be deemed an affidavit of voter
16 registration and an application for permanent vote by mail status.

17 SEC. 10. Section 3107 of the Elections Code is amended to
18 read:

19 3107. If a special vote by mail voter is released from service
20 after the closing date of registration for an election and has returned
21 to the county of his or her residence and is not a registered voter,
22 he or she may apply in person to the elections official for
23 permission to register. If the elector furnishes documentary proof
24 of release from service after the closing date of registration for the
25 election, the elections official shall allow him or her to be registered
26 and to vote in the election. On or before the day of election the
27 elections official shall deliver to the precinct board a list of special
28 vote by mail voters registered under this section.

29 SEC. 11. Section 3108 of the Elections Code is amended to
30 read:

31 3108. If a special vote by mail voter to whom a vote by mail
32 ballot has been mailed and which ballot has not been voted by him
33 or her returns to the county in which he or she is registered on or
34 before election day, he or she may apply for a second vote by mail
35 ballot pursuant to Section 3014. The elections official shall require
36 him or her to sign an authorization to cancel the vote by mail ballot
37 previously issued when it is returned to the county elections
38 official. The elections official shall then issue another vote by mail
39 ballot to the voter, or the elections official shall certify to the

1 precinct board that the voter is eligible to vote in the precinct
2 polling place of his or her residence.

3 SEC. 12. Section 3109 of the Elections Code is amended to
4 read:

5 3109. If a special vote by mail voter returns to the county of
6 his or her residence after the final day for making application for
7 a vote by mail ballot, he or she may appear before the elections
8 official and make application for registration, vote by mail ballot,
9 or both. The elections official shall register the voter, if he or she
10 is not registered, and deliver to him or her a vote by mail ballot
11 that may be voted in the elections official's office or voted outside
12 the elections official's office on or before the close of the polls on
13 the day of election and returned as are other vote by mail ballots.

14 SEC. 13. Section 3110 of the Elections Code is amended to
15 read:

16 3110. If a special vote by mail voter is unable to appear at his
17 or her polling place because of being recalled to service after the
18 final day for making application for a vote by mail ballot, but
19 before 5 p.m. on the day before the day of election, he or she may
20 appear before the elections official in the county in which the
21 special vote by mail voter is registered or, if within the state, in
22 the county in which he or she is recalled to service and make
23 application for a vote by mail ballot, which may be submitted by
24 facsimile, or by e-mail or online transmission if the elections
25 official makes the transmission option available. The elections
26 official shall deliver to him or her a vote by mail ballot that may
27 be voted in the elections official's office or voted outside the
28 elections official's office on or before the close of the polls on the
29 day of election and returned as are other vote by mail ballots. To
30 be counted, the ballot must be returned to the elections official's
31 office in person, by facsimile transmission, or by an authorized
32 person on or before the close of the polls on the day of the election.
33 If the special vote by mail voter appears in the county in which he
34 or she is recalled to service, rather than the county to which he or
35 she is registered, the elections official shall coordinate with the
36 elections official in the county in which the special vote by mail
37 voter is registered to provide the vote by mail ballot that contains
38 the appropriate measures and races for the precinct in which the
39 special vote by mail voter is registered.

1 SEC. 14. Section 3112 of the Elections Code is amended to
2 read:

3 3112. If by any act of Congress that is now or may become
4 effective during the effective period of this section, provision is
5 made for voting by special vote by mail voter, that act shall control
6 and be superior to any conflicting provisions of this code, and all
7 state, county, municipal and district officers who are charged with
8 the performance of duties with reference to the election laws of
9 this state shall perform the duties and discharge the obligations
10 placed upon them by that act of Congress. It is the purpose and
11 intent of this section that full effect shall be given to ballots cast
12 by special vote by mail voters under federal statutes in order that
13 no person shall be deprived of his or her vote by virtue of having
14 cast his or her ballot under any federal statute rather than under
15 the laws of this state.

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